

Foo et al.

S/N: 09/682,685

**REMARKS**

Claims 1-29 are pending in the present application. In the Advisory Action mailed November 6, 2003, the Examiner indicated that Applicant's remarks presented on September 4, 2003 regarding claim 10 did not overcome the rejections under 35 U.S.C. §101. While Applicant disagrees with the conclusion reached by the Examiner, Applicant has nevertheless amended claim 10 herein. Specifically, claim 10 has been amended to define the computer program as being stored on a computer readable storage medium. By the Amendment, Applicant respectfully believes that the rejection of claim 10 under 35 U.S.C. §101 has been traversed.

The Examiner also indicated that the terminal disclaimers filed on September 4, 2003 are improper "because the person who signed the terminal disclaimer has failed to state his/her capacity to sign for the business entity and is not recognized as an officer of the assignee." Again, Applicant disagrees with the conclusion reached by the Examiner. Moreover, the Examiner's position is unsupported by relevant sections of 37 C.F.R.

37 C.F.R. §1.321 provides that for statutory disclaimers, including terminal disclaimers, that any terminal disclaimer for a patent to be granted must be signed by the applicant or the assignee, if there is an assignee of the entire interest, specify the portion of the term being disclaimed, state the present extent of the applicant's or assignee's interest in the patent to be granted, and be accompanied by a fee. When to obviate judicially created double patenting rejection, the terminal disclaimer must include a provision that any patent granted on that application shall be enforceable only for and during such period that said patent is commonly owned with the application which forms the basis of the rejection. Contrary to the assertions of the Examiner, it is not required that the signatory of the assignee state his/her capacity to sign for the assignee.

MPEP §1490 provides that "the owner of the patent or application can sign a disclaimer, and a person empowered by the owner to sign the disclaimer can also sign it." An attorney of record is also authorized to execute a terminal disclaimer. See MPEP §1490 and 37 C.F.R. §1.321.

Applying the above standard to the terminal disclaimers filed on September 4, 2003, it is clear that the Examiner has improperly rejected the terminal disclaimers. One terminal disclaimer was executed by an attorney of record and the other terminal disclaimer was executed by a representative of an assignee. The terminal disclaimer indicated that the signatory was empowered to sign the disclaimer. As such, the requirement of 37 C.F.R. § 1.321 have been

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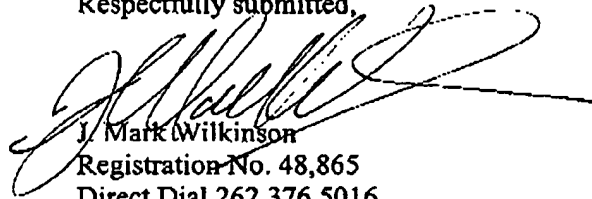
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satisfied. Accordingly, Applicant requests entry of the terminal disclaimers filed September 4, 2003.

A Fee Transmittal form is enclosed authorizing charging of deposit account no. 07-0845 for a one month extension of time to respond.

In light of the foregoing, Applicant respectfully believes the present application to be in condition for allowance and cordially invites the Examiner to contact the undersigned to expedite the handling of this matter.

Respectfully submitted,



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